
**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

JOINT MOTION FOR STAY PENDENTE LITE

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August 4, 2008

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SUMMARY

On August 1, 2008, Rural Cellular Association, Cellular South Licenses, Inc., N.E. Colorado Cellular, Inc., the Cellcom Companies, Smith Bagley, Inc., Carolina West Wireless, Inc., Bluegrass Cellular, Inc., MTPCS, LLC, and Leaco Rural Telephone Cooperative (“Joint Petitioners”) jointly petitioned the Commission to reconsider and rescind the interim cap it imposed on Universal Service Fund (“USF”) high-cost support that is disbursed to competitive eligible telecommunications carriers (“CETCs”). See *High-Cost Universal Service Support*, FCC 08-122 (May 1, 2008) (“*Interim Cap Order*”). Joint Petitioners now ask the Commission to stay the effectiveness of the *Interim Cap Order* until such time as its order disposing of their petition for reconsideration becomes final in all respects.

Joint Petitioners set forth in their petition for reconsideration the reasons why they are likely to prevail on the merits of their challenge to the *Interim Cap Order*. Moreover, in the event that judicial review of the *Interim Cap Order* is sought, a reviewing court is unlikely to view the Commission’s imposition of an interim cap only on the high-cost support to CETCs as a mere transitional action entitled to especially deferential review. To the contrary, a reviewing court is likely to agree that the Commission abused its discretion by taking any “interim” action on USF high-cost support in May 2008.

There is no empirical evidence whatsoever that an “emergency” interim CETC-only cap was needed to avert what the Commission claimed was a “crisis” that could have crippled the USF. The use of such hyperbole to justify what will amount to a facially discriminatory, five-month cap of CETC high-cost support is among several “danger signals” that will be apparent to a reviewing court that suggest that the *Interim Cap Order* was not the product of a reasoned decision-making process.

The Commission specifically stated that the interim cap on CETC high-cost support will remain in place only until it adopts comprehensive, high-cost universal service reform. The statutory deadline for Commission action on comprehensive reform is November 19, 2008. If it will terminate on the date comprehensive high-cost reform measures are adopted, the interim cap will be in effect a little less than four months and will produce savings to the USF in 2008 of approximately \$39,766,000 out of an estimated \$7,268,770,000 in disbursements. If it lasts until the comprehensive reform measures take effect in five months, the USF will have been saved approximately \$52,737,000. Based on these estimates, the interim cap stands to produce a savings to the USF in the range of 0.55 to 0.73 percent in 2008. A less-than-one-percent savings is likely to lead a court to the same obvious conclusion that Joint Petitioners reached: the Commission needlessly imposed a stopgap, short-term cap on CETC high-cost support that will have no material effect on the USF, instead of devoting its energies in fulfilling its commitment to putting comprehensive reform measures in place by November 19, 2008. Hence, rather than garnering deferential review from a reviewing court, the Commission's interim action will be greeted by judicial skepticism at best.

Joint Petitioners exemplify the small, rural wireless carriers that will be irreparably injured if the interim cap remains in effect. The cap will alter the competitive balance between wireless carriers and incumbent LECs ("ILECs") because ILECs will be able to continue subsidizing their rates to customers in high-cost areas, while wireless CETCs will be forced to postpone or cancel new capital investment projects. Some of the Joint Petitioners have made enforceable commitments to state public utility commissions promising new cell site construction or upgrades based on the anticipated receipt of uncapped high-cost support. In states in which CETCs receive no high-cost support, any wireless company wishing to serve a

high-cost area will receive no USF funding, making the advantage enjoyed by ILECs there to be insuperable.

Congress and Commission have repeatedly stated that consumers must be the focus of universal service mechanisms. Yet, consumers stand to be harmed by the interim cap. In every area where a new cell site is delayed or cancelled, hundreds or thousands of citizens are denied the benefits of new and improved wireless service.

Finally, the public interest will not be served by allowing the cap to remain in effect while the *Interim Cap Order* is under reconsideration. There is no public benefit to be derived from having the cap in place for *any* period of time, much less than for a four- or five-month period in which the cap will only produce savings of less-than-one-percent savings in USF disbursements.

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JOINT MOTION FOR STAY PENDENTE LITE

Rural Cellular Association (“RCA”), Cellular South Licenses, Inc. (“Cellular South”), N.E. Colorado Cellular, Inc. (“NECC”), the Cellcom Companies (“Cellcom”), Smith Bagley, Inc. (“Smith Bagley”), Carolina West Wireless, Inc. (“Carolina West”), Bluegrass Cellular, Inc. (“Bluegrass Cellular”), MTPCS, LLC (“MTPCS”), and Leaco Rural Telephone Cooperative (“Leaco”) (collectively “Joint Petitioners”), by their attorneys and pursuant to §§ 1.41 and 1.43 of the Commission’s Rules (“Rules”), hereby request the Commission to stay the effectiveness of the order it released on May 1, 2008 in the above-captioned rulemaking proceedings. *See High-Cost Universal Service Support*, FCC 08-122 (May 1, 2008) (“*Interim Cap Order*”). In particular, Joint Petitioners request that the *Interim Cap Order* be stayed *pendente lite* or until such time as the Commission’s order disposing of the petition for reconsideration that they filed in these proceedings becomes final in all respects.¹ In support thereof, the following is respectfully submitted:

INTRODUCTION

The Commission, in considering requests for stay, generally follows the criteria recited in

¹ See Joint Petition for Reconsideration, WC Docket No. 05-337 (Aug. 1, 2008) (“Petition”). The Petition is incorporated herein by this reference.

Virginia Petroleum Jobbers Association.² These criteria are: (1) the likelihood that the party seeking the stay will prevail in its appeal; (2) whether the party will incur irreparable injury in the absence of a stay; (3) the likelihood that granting a stay would be harmful to other parties; and (4) how granting a stay would affect the public interest.

The relative importance of the four criteria will vary based upon the circumstances of a particular case.³ Thus, “[i]f there is a particularly overwhelming showing in at least one of the factors, the Commission may find that a stay is warranted notwithstanding the absence of another one of the factors.”⁴ In addition, the first of the factors may be more liberally construed if the requesting party makes a substantial case of the merits and the other three factors strongly favor interim relief.⁵ As demonstrated below, each of the four *Virginia Petroleum Jobbers* factors weighs heavily in favor of a stay *pendent lite*.

ARGUMENT

I. JOINT PETITIONERS ARE LIKELY TO PREVAIL ON THE MERITS

For Joint Petitioners’ showing that they are likely to prevail on the merits of their challenge to the *Interim Cap Order*, see Petition, at 6-25. Moreover, in the event that judicial review of the *Interim Cap Order* is sought, a reviewing court is unlikely to view the Commission’s imposition of an interim cap only on the high-cost support to competitive eligible telecommunications carriers (“CETCs”) as a “mere transitional” action entitled to “especially

² *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 1705, 1706-07 (CGAB 2008) (“*TRS Stay Order*”); see also *Washington Metropolitan Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (holding that “under *Virginia Petroleum Jobbers* a court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits).

³ See *4.9 GHz Band Transferred from Federal Government Use*, 19 FCC Rcd 15270, 15272 (2004).

⁴ *TRS Stay Order*, 23 FCC Rcd at 1707 (footnote omitted).

⁵ *Comark Cable Fund III v. Northwestern Indiana Telephone Co., Inc.*, 104 FCC 2d 451, 456 (1985).

deferential” review. *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000). To the contrary, a reviewing court is likely to agree that the Commission abused its discretion by taking any “interim” action on Universal Service Fund (“USF”) high-cost support in May 2008.

As Joint Petitioners have shown, there is no empirical evidence whatsoever that an “emergency” interim CETC-only cap was needed to avert what the Commission claimed was a “crisis” that could have crippled the USF.⁶ The use of such hyperbole to justify what will amount to a facially discriminatory, five-month cap of CETC high-cost support is among several “danger signals” that will be apparent to a reviewing court that suggest that the *Interim Cap Order* was not the product of a reasoned decision-making process. *ITT World Communications, Inc. v. FCC*, 699 F.2d 1219, 1247 (D.C. Cir. 1983).

A. The Commission’s Imposition of a Cap on CETC High-Cost Support on an “Interim” Basis Was an Abuse of Discretion

The Commission’s decision to impose an interim cap on high-cost fund disbursements to CETCs was an abuse of the agency’s discretion, because acting on an interim basis did not comport with the statutory framework for implementing the Telecommunications Act of 1996 (“1996 Act”) amending the Communications Act of 1934 (“Act”). Moreover, the effort will ultimately prove to be futile. Merely labeling an action as “interim” cannot insulate the Commission from the legislative requirement to engage in reasoned decision-making.⁷

While the Commission expressed confidence “that the interim cap’s life will be of limited

⁶ *Interim Cap Order*, at 12 (¶ 22). The Commission attempted to justify its imposition of a cap upon its conclusion that an emergency threatened the sufficiency of the high-cost fund, and that this emergency must be addressed immediately because continued growth of the fund at projected levels would soon make the USF unsustainable. *See id.* The Commission failed to present any explanation or analysis in support of any of these assumptions, and at the same time ignored significant record evidence that demonstrated the contrary. *See* Petition, at 13-17. It then compounded the lack of reasoned decision-making that is the hallmark of the *Interim Cap Order* by attempting to sidestep its own principle of competitive neutrality in adopting a CETC-only cap that is anti-competitive on its face.

⁷ *See* 5 U.S.C. § 706(2)(A).

duration[,]”⁸ the agency did not specifically address the source of its authority to take action on an interim basis. Understandably so, since Congress neither empowered the Federal-State Joint Board on Universal Service (“Joint Board”) to recommend, nor authorized the Commission to adopt, interim measures to be enforced while the Joint Board is considering universal service rule changes to recommend. Nor did Congress authorize the Joint Board to recommended an interim cap on high-cost support having never vetted its recommendation in a notice and public comment proceeding as called for by § 254(a) of the Act. *See* 47 U.S.C. § 254(a). *See also* Petition, at 7.

As exemplified by *Alenco*, courts were deferential to the Commission when it adopted interim regulations to implement the universal service provisions of the 1996 Act. The *Alenco* court’s deference to the Commission’s incremental approach to implementing the 1996 Act and reworking the universal service system was based on provisions in the statute requiring the Commission to complete a rulemaking to implement the universal service recommendations of the Joint Board by May 8, 1997 (within 15 months of February 8, 1996).⁹ The rules were required to include “a specific timetable for implementation.”¹⁰ The Fifth Circuit concluded that, “[b]y instructing the FCC to establish a ‘timetable for implementation’ by the statutory deadline, Congress assumed the implementation would occur over a transition period after the fifteen-month deadline.”¹¹

The Commission, however, never adopted a rule that could be considered a “specific timetable for implementation,” instead contenting itself with a general timetable that was limited

⁸ *Interim Cap Order*, at 12 (¶ 23).

⁹ *See* 47 U.S.C. § 254(a)(2).

¹⁰ *Id.*

¹¹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 436 (5th Cir. 1999).

to implementing an administrative structure for running the new USF program.¹² Obviously, the Commission's timetable was neither "specific" nor a timetable for the implementation of the universal service support mechanisms required by Congress. Having failed to establish the "specific timetable for implementation" required by Congress, there now is no basis for the Commission to claim that it is still within the transitional period for implementing § 254.

Also problematic for the Commission is the fact that its 15-month statutory deadline passed more than *eleven years* before the agency adopted its "interim" cap on high-cost support in the *Interim Cap Order*. There is no evidence whatsoever that Congress envisioned, much less authorized, that the Commission would still be "retooling" universal service twelve years after § 254 was enacted. Under these circumstances, the Commission cannot contend that its "interim" cap is a "merely transitional" action on the road to implementing § 254.¹³ Consequently, the agency's *Interim Cap Order* ought not to be accorded any special deference by a reviewing court.

B. The Needless Imposition of an Interim Cap on CETC
 High-Cost Support Should Elicit Heightened Judicial Scrutiny

In addition to the fact that its "interim" cap does not fit within the temporal boundaries of § 254 of the Act, the Commission faces another problem: it cannot avoid its obligation to engage in reasoned decision-making "by dubbing its action 'interim.'"¹⁴

The Commission specifically stated that the interim cap on CETC high-cost support will remain in place only until it adopts comprehensive, high-cost universal service reform. *See Interim Cap Order*, at 12 (¶ 23). The statutory deadline for Commission action on the Joint

¹² *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9217 (1997) (subsequent history omitted); 47 C.F.R. § 54.701.

¹³ *Alenco*, 201 F.3d at 616.

¹⁴ *Chlorine Chemistry Council v. EPA*, 206 F.3d 1286, 1291 (D.C. Cir. 2000).

Board's recommendations for comprehensive reform is November 19, 2008.¹⁵ If it will terminate on the date the Commission adopts comprehensive high-cost reform measures, the interim cap will be in effect a little less than four months. If it lasts until the comprehensive reform measures take effect, the interim cap will be in effect a total of five months.¹⁶

If the interim cap on CETC high-cost support remains in effect for four months, Joint Petitioners estimate (based on projections for the fourth quarter 2008 that the Universal Service Administrative Company ("USAC") released on August 1, 2008) that the cap will produce savings to the USF in 2008 of approximately \$39,766,000¹⁷ out of an estimated \$7,268,770,000 in disbursements.¹⁸ If the cap survives for five months, the USF will have been saved approximately \$52,737,000,¹⁹ which is substantially less than USAC's administrative expenses (\$60,950,000) in the fourth quarter 2008. Based on these estimates, the interim cap stands to produce a savings to the USF in the range of 0.55 to 0.73 percent in 2008.

¹⁵ The Commission must act within one year following its receipt of the Joint Board's recommendations for comprehensive USF reform. See 47 U.S.C. § 254(a)(2). The Joint Board's recommendation was made on November 20, 2008. See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, 22 FCC Rcd 20477 (Jt. Bd. 2007).

¹⁶ This estimate is based on the assumption that the Commission will in fact act upon the Joint Board's recommendation within the one-year deadline, that its actions will take effect 30 days after publication in the Federal Register, and that such publication will occur in early December 2008.

¹⁷ To arrive at an estimate of the savings that will be realized from the interim cap on CETC high-cost support in August and September 2008, the total high-cost support received by CETCs nationwide in March 2008 (\$115,493,884) was subtracted from the total projected support for CETCs nationwide as listed in USAC's third quarter 2008 projections (\$122,406,419) to arrive at an estimated monthly savings of \$6,912,535. To calculate the savings for October and November 2008, the March 2008 high-cost support benchmark was subtracted from the projected uncapped high-cost support for the CETC listed in USAC's fourth quarter projections (\$128,464,361), which produced an estimated monthly savings in the fourth quarter 2008 of \$12,970,477. The total estimated savings for the four-month period was calculated as follows: $(2 \times \$6,912,535) + (2 \times \$12,970,477) = \$39,766,024$.

¹⁸ USAC reports that USF disbursements for the first two quarters of 2008 totaled \$3,326,950,000. USAC projects that the USF disbursements will total \$3,941,820,000 in the third and fourth quarters of 2008. Thus, Joint Petitioners estimate that USF disbursements will total \$7,268,770,000 in 2008.

¹⁹ Joint Petitioners calculated the estimated savings for the five-month period as follows: $(2 \times \$6,912,535) + (3 \times \$12,970,477) = \$52,735,501$.

If and when this matter reaches a circuit court of appeals, the court undoubtedly will have before it data from USAC showing what the Commission's CETC-only cap actually saved the USF. If the data shows a less-than-one-percent savings as it does now, the court is very likely to come to the same obvious conclusion that Joint Petitioners did: the Commission needlessly imposed a stopgap, short-term, highly discriminatory cap on CETC high-cost support that will have no material effect on the USF, instead of devoting its energies in fulfilling its commitment to putting comprehensive reform measures in place by its fast-approaching deadline of November 19, 2008. *See* Petition, at 20. Hence, rather than garnering deferential review from a reviewing court, the Commission's interim action will be greeted by judicial skepticism at best.

II. JOINT PETITIONERS WILL SUFFER IRREPARABLE HARM IF A STAY IS NOT GRANTED

Joint Petitioners exemplify the small, rural wireless carriers that will be irreparably injured if the interim cap remains in effect. RCA represents dozens of wireless CETCs that serve rural America.²⁰ As wireless CETCs, Cellular South, NECC, Cellcom, Smith Bagley, Carolina West, Bluegrass Cellular, MTPCS, and Leaco are members of the class of carriers that have been targeted for injury by the Commission's discriminatory action. Joint Petitioners face irreparable injury from two fronts.

First, imposition of the cap would alter the competitive balance between wireless carriers and incumbent LECs ("ILECs") because ILECs will be able to continue subsidizing their rates to customers in rural and other high-cost areas by using the same level of high-cost support that they currently receive, while wireless CETCs will be forced to postpone or cancel new capital investment projects. Some of the Joint Petitioners have made enforceable commitments to state

²⁰RCA is an association representing the interests of approximately 80 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA's wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but one or two of RCA's members serve fewer than 500,000 customers.

public utility commissions promising new cell site construction or upgrades. Many state commissions require CETCs to submit multi-year service quality commitment plans, similar to those published in § 54.202(a) of the Rules. In Montana, for example, MTPCS was designated as a CETC just after the cap's effective date, thwarting the state's desire to have its designation of MTPCS result in meaningful investment in the state's rural areas. In Ohio, which receives no support to CETCs today, any company wishing to enter today will receive no funding, making the advantage enjoyed by ILECs there to be insuperable. The competitive inequity that would be forced upon wireless CETCs by the Commission's cap would lead to the possibility that wireless carriers would permanently lose customers to competing incumbents because of the disparity in rates resulting from the cap.²¹

Second, Joint Petitioners also will face the likely prospect of the loss of their customers' goodwill as a result of imposition of the cap. This loss of goodwill, which will be threatened by the possibility of increased rates and the retrenchment of service, will cause irreparable harm to the carriers.²²

Finally, consumers, which the Congress and Commission have repeatedly stated must be the focus of universal service mechanisms, will also be harmed. In every area where a new cell site is delayed or cancelled, hundreds or thousands of citizens are denied the benefits of new and improved wireless service. The Commission specifically declined to place a specific sunset date on the cap, making it a real possibility that this harm will extend well into the future. For citizens living in areas with poor wireless coverage, this is a matter of the highest order.

²¹ See *Merrill Lynch, Pierce, Fenner & Smith v. Bradley*, 756 F.2d 1048, 1055 (4th Cir. 1985) (preliminary relief must be granted where the petitioner "faced irreparable, noncompensable harm in the loss of its customers").

²² See *Multi-Channel TV Cable v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) ("when the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied").

III. OTHER INTERESTED PARTIES WILL NOT BE HARMED IF THE STAY IS GRANTED

Neither consumers nor ILECs will be harmed by the grant of a stay. Consumers in rural and other high-cost areas will not be harmed because they will continue to receive service on a competitive basis from Joint Petitioners (including RCA's membership carriers) and other wireless carriers without disruption or the prospect of rate increases, and thus will continue to enjoy the benefits of competition in their service areas.

More generally, consumers who pay universal service surcharges in connection with their receipt of interstate telecommunications services will not be harmed by a stay of the interim cap because it is highly unlikely that they will experience any appreciable increase in the amount of surcharges they pay if a cap is not imposed. There is no record evidence, notwithstanding the Commission's concerns,²³ that the high-cost fund will continue to grow (if a cap is not immediately imposed) at a rate that will cause significant increases in consumers' USF surcharges. In addition, even assuming the accuracy of the undocumented and unexplained high-cost fund growth projections upon which the Commission relied,²⁴ there is record evidence that such growth in the fund would have a negligible impact upon the level of USF surcharges.²⁵

²³ See *Interim Cap Order*, at 4-5 (¶ 6).

²⁴ See *id.*

²⁵ In its comments that it filed jointly with the Alliance of Rural CMRS Carriers ("ARC"), RCA made the following point:

Today a wireless consumer with a \$50.00 monthly bill contributes about \$2.17 to the Universal Service Fund . . . , of which only 32 cents (or 0.6% of the total bill) goes to CETC high-cost support. If we accept the [Joint Board] projection that the level of CETC support will double to \$2 billion [in 2008] (and ILEC support remains constant, despite the continuing loss of ILEC lines), this same consumer would pay a federal USF charge of \$2.48 — an increase of only 31 cents.

Comments of RCA and ARC, WC Docket No. 05-337, at 13 (June 6, 2007) (footnotes omitted) ("Comments"). The example provided by RCA would apply equally to a wireline consumer with \$18-\$19 per month in charges for interstate usage. *Id.*, at 13 n.24.

ILECs will not be harmed by the stay because maintenance of the *status quo* will impose no burden on them. They will continue to receive high-cost disbursements without any interruption or disruption, and they will continue to compete against wireless carriers in rural and other high-cost areas on a playing field made level by the application of the Commission's current rules, including the principle of competitive neutrality. The fact that ILECs would be the beneficiaries of the anti-competitive effects of the cap if it were allowed to take effect provides no basis for a conclusion that these carriers would be harmed by a stay of the *Interim Cap Order*.

IV. THE PUBLIC INTEREST FAVORS GRANTING A STAY

Consumers in rural and other high-cost areas will benefit from the grant of a stay because they will continue to receive wireless services; they will not be faced with the prospect of rising prices for these wireless services (because of the cutback of high-cost fund disbursements); and further deployment of wireless services in rural and high-cost areas will be able to continue without any impediment or interruption. There is record evidence supporting these conclusions about the harmful effects that the Commission's high-cost fund cap would have on consumers in rural areas,²⁶ and showing the concerns of consumers and their representatives regarding imposition of a cap.²⁷

The deployment of wireless service in rural areas likely will be slowed and even curtailed as a result of a cap on high-cost fund disbursements. Because of the unique advantages that wireless services provide in rural areas (*e.g.*, the ability to communicate while commuting or otherwise traveling over greater distances than in urban areas), a reduction in the availability of

²⁶ See, *e.g.*, Comments, at 16-22.

²⁷ See Comments of Michael Lagorio, WC Docket No. 05-337, at 1 ("Capping the fund will shut the door on rural America."); Comments of Betty S. Thomas, Mayor, Pleasant Hill, Louisiana, WC Docket No. 05-337, at 1; Comments of Representative Harold J. Brubaker, North Carolina General Assembly, WC Docket No. 05-337, at 1; Comments of Senator Lavon Heidemann, Nebraska State Legislature, WC Docket No. 05-337, at 1.

these services (or an increase in the cost of the services) would have adverse consequences for rural consumers. Most significantly, grant of the stay would ensure the continuing and uninterrupted availability of wireless services for use in emergencies.²⁸

Finally, it is difficult to imagine how the public interest would be served by allowing the cap to remain in effect while the *Interim Cap Order* is under reconsideration. The Commission has promised that the cap will remain in effect only for a brief period of time. The deadline for Commission action on the Joint Board's recommendations for comprehensive reform is due in less than four months. There is no public benefit to be derived from having the cap in place for *any* period of time, much less than for a four- or five-month period in which the cap will only produce savings of less-than-one-percent savings in USF disbursements.

The Joint Board declared in April 2007 that the high-cost fund faced an emergency,²⁹ but the Commission did not see any need to take action until more than full a year later. Now, more than 18 months have passed since the "emergency" was first proclaimed. There is no evidence that the "dire jeopardy" supposedly faced by the fund has materialized during this period, nor is there any evidence that the fund has become, or is about to become, unsustainable.³⁰ The cap thus would be fighting against a phantom for four or five months, with the likely prospect that the only result of the cap would be to harm consumers and CETCs.

²⁸ Comments at 17-18; Reply Comments of RCA and ARC, WC Docket No. 05-337, at 35-38 (June 21, 2007) (citing comments by law enforcement officials and members of the public).

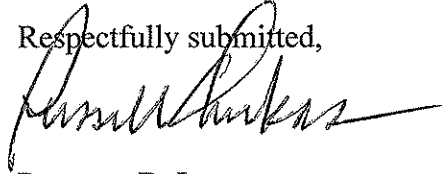
²⁹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, 22 FCC Rcd 8998 (Jt. Bd. 2007).

³⁰ Based on USAC's projections for the fourth quarter 2008, high-cost USF support will reach \$4,516,120,000 in 2008. High-cost support will have grown at an annual rate of 5.35 percent. *See* Petition, at 15 (Table 3). Total USF disbursements will grow to \$7,268,770,000. *See supra* note 18. Thus, USF disbursements will have increased at an annual rate of only 4.51 percent. *See* Petition, at 15 (Table 3).

CONCLUSION

The Commission should stay the effectiveness of the actions taken in the *Interim Cap Order* pending reconsideration and possible judicial review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell D. Lukas", written over a horizontal line.

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